

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

VERN McKINLEY,	)	
20745 Ashburn Station Place	)	
Ashburn, Virginia 20147,	)	
	)	
Plaintiff,	)	Civil Action No.
	)	
v.	)	
	)	
COMMODITY FUTURES	)	
TRADING COMMISSION,	)	
Three Lafayette Centre	)	
1155 21st Street, N.W.	)	
Washington, DC 20581,	)	
	)	
and	)	
	)	
SECURITIES AND EXCHANGE	)	
COMMISSION,	)	
100 F Street, N.E.	)	
Washington, DC 20549,	)	
	)	
Defendants.	)	
_____	)	

**COMPLAINT**

Plaintiff Vern McKinley brings this action against Defendants Commodity Futures Trading Commission (“CFTC”) and Securities and Exchange Commission (“SEC”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). As grounds therefor, Plaintiff alleges as follows:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

### **PARTIES**

3. Plaintiff Vern McKinley is a private citizen residing in Ashburn, Virginia. He is a former employee of the Board of Governors of the Federal Reserve, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, and the Office of Thrift Supervision. Since 1999, he has served as a consultant, legal advisor and regulatory policy expert on financial sector issues for governments in the United States, China, Nigeria, Indonesia, Ukraine, Kazakhstan, Latvia, the Philippines, Yugoslavia (now Montenegro), Kenya, Eastern Caribbean Currency Union, Belarus, Morocco, Sudan, Libya, Afghanistan, Armenia, Kosovo, and Tajikistan. In addition, Plaintiff is a Research Fellow at the Independent Institute and author of the recently-published book *Financing Failure: A Century of Bailouts*.

4. Defendant CFTC is an agency of the U.S. Government and is headquartered at Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581. Defendant CFTC has possession, custody, and control of records to which Plaintiff seeks access.

5. Defendant SEC is an agency of the U.S. Government and is headquartered at 100 F Street, NE., Washington, DC 20549. Defendant SEC has possession, custody, and control of records to which Plaintiff seeks access.

### **STATEMENT OF FACTS**

6. On October 31, 2011, the Financial Stability Oversight Council ("FSOC") met to discuss developments regarding MF Global. At this meeting, Gary Gensler, chairman of the CFTC, and Mary Schapiro, chairman of the SEC, provided updates on the conditions of MF Global.

7. On April 24, 2012, Plaintiff submitted FOIA requests to the CFTC and the SEC, by facsimile and certified mail, seeking access to

copies of any and all records concerning this update of MF Global, the discussion of the implications for the broader financial system, and any follow up contact and discussions on public statements. Such records include, but are not limited to, [] detailed meeting minutes, meeting notes, supporting memoranda, communications, and electronic messages and attachments.

8. The CFTC acknowledged receipt of Plaintiff's request by letter dated April 25, 2012 and assigned the request file number 12-00095-FOIA. The CFTC's acknowledgement letter did not state whether a determination to comply with the request had been made. Nor did the letter notify Plaintiff of any such determination, the reasons therefor, or the right to appeal any adverse determination.

9. By letter dated April 25, 2012, the SEC acknowledged receiving Plaintiff's request on April 24, 2012 and assigned the request tracking number 12-06708-FOIA. The SEC's acknowledgement letter did not state whether a determination to comply with the request had been made. Nor did the letter notify Plaintiff of any such determination, the reasons therefor, or the right to appeal any adverse determination.

10. On May 18, 2012, the SEC provided Plaintiff with an interim response to his request. It informed Plaintiff that it had located a two-page document and was withholding the document's production pursuant to FOIA Exemption 4. Plaintiff subsequently appealed the SEC's interim response on June 4, 2012. On June 11, 2012, Plaintiff's counsel conferred with the SEC. The SEC informed Plaintiff's counsel that an administrative appeal was not necessary because no final determination had been made. Plaintiff therefore withdrew his "administrative appeal."

11. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), the CFTC and the SEC were required to determine whether to comply with Plaintiff's requests within twenty (20) working days after their receipt of the requests and to notify Plaintiff immediately of their determination, the reasons

therefor, and the right to appeal any adverse determination. Accordingly, the determinations by the CFTC and the SEC were due by May 23, 2012 at the latest.

12. As of the date of this Complaint, the CFTC and the SEC have failed to: (i) determine whether to comply with Plaintiff's requests; (ii) notify Plaintiff of any such determinations or the reasons therefor; (iii) advise Plaintiff of the right to appeal any adverse determinations; or (iv) produce the requested records or otherwise demonstrate that the requested records are exempt from production.

13. Because the CFTC and the SEC failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to his requests, pursuant to 5 U.S.C. § 552(a)(6)(C).

**COUNT 1**  
**(Violation of FOIA, 5 U.S.C. § 552)**

14. Plaintiff realleges paragraphs 1 through 13 as if fully stated herein.

15. Defendants are unlawfully withholding public records requested by Plaintiff pursuant to 5 U.S.C. § 552.

16. Plaintiff is being irreparably harmed by reason of Defendants' unlawful withholding of the requested public records, and Plaintiff will continue to be irreparably harmed unless Defendants are compelled to conform their conduct to the requirements of the law.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendants to conduct searches for any and all records responsive to Plaintiff's FOIA requests and demonstrate that they employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA requests; (2) order Defendants to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA requests and a *Vaughn* indices of any responsive records withheld under claim of exemption; (3) enjoin Defendants from continuing to

withhold any and all non-exempt records responsive to Plaintiff's FOIA requests; (4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: July 18, 2012

Respectfully submitted,

/s/ Paul J. Orfanedes  
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*Attorneys for Plaintiff*